IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

JOHN WEST	:	APPEAL NO. C-100591 TRIAL NO. A-0906597
and	:	
GINGER WEST,	:	*JUDGMENT ENTRY*.
Plaintiffs-Appellants,	:	
vs.	:	
SYSTEM PARKING, INC., d/b/a/ CHEMED PNC GARAGE	:	
and	:	
MRI ASSET MGMT., LLC.	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Plaintiffs-appellants John and Ginger West appeal the trial court's grant of summary judgment on their claims for negligence and loss of consortium against defendants-appellees, System Parking, Inc., d/b/a Chemed PNC Garage, and MRI Asset Management (collectively "System Parking"). For the following reasons, we affirm.

John West slipped on ice and was injured while exiting from System Parking's garage ("the parking garage"). The parking garage has an entrance and exit ramp

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

that is divided by two yellow lines. At the end of the ramp, prior to the point where it actually enters the parking garage, is a small island dividing the ramp. A portable sign stands at the edge of the island, and there is also a small building housing the cashier.

On January 20, 2009, West drove to his office in downtown Cincinnati, and parked in the parking garage, as he has done for the previous years. He testified that it had been "cold and clear" as he was driving to work, and that he did not remember whether there had been a snow or an ice storm that week. He worked all day, drove home to pick up his wife, and then returned downtown to attend an event. On the return drive, West testified, it had been sunny and cold as well as "clear and dry." By his account, when he entered the parking garage for the second time that day there was no salt on the ramp, but the ramp was clear. He testified that there was salt on the sidewalk connected to the exit ramp. After parking the car, West and his wife walked out of the garage, and as they were crossing over the ramp, just in front of the island, West slipped on a patch of ice that one witness estimated was a few inches wide and one and one-half feet long. West injured his leg. West testified that the ice patch did not extend to or touch the island.

West testified that he did not remember noticing any snow piled upon the island, near the portable sign, even though he had seen snow piled there before. West had previously noticed water dripping from the sign, which, he claimed, had caused rust marks on the island. But he did not see any water on or near the island that day. He also testified that he could not remember the last time that he had seen snow piled on the island prior to the day he fell.

Kimberly Cromwell, the assistant manager for the parking garage, testified that, on the day of West's fall, there had been no snow in the area, but that the

maintenance personnel had treated the ramp with a chemical to melt any ice. She had inspected the ramp an hour before West fell to confirm that the ramp had been treated, and according to her, the ramp "looked good." She also testified that she had never seen snow piled up on the island. Finally, she testified that any rust marks on the island had probably been caused by moving the sign from one spot to another.

Kelly Rueckert, the facility manager of the parking garage, testified that she saw the ice patch that West had slipped on but did not see other ice patches in the area, and she believed that the ice patch most likely formed after Cromwell had checked the ramps but before West fell. She testified that there was no snow piled in the area. When asked how the ice patch could have formed, Rueckert stated that the water that formed the ice patch could have come "from a car coming in [or] there may have been a small pile of snow on that traffic island that melted that day [or] it could have come from someone dumping their water. I mean, I don't know where it came from."

In his single assignment of error on appeal, West argues that the trial court erred by granting summary judgment in favor of System Parking. We disagree.

Civ.R. 56(C) provides that summary judgment is proper when "(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come but to one conclusion, and viewing the evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party."[2] We review a trial court's decision to grant summary judgment de novo.[3]

[2] *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.
[3] *Koos v. Central Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, 641 N.E.2d 265.

To establish actionable negligence, West had to show the existence of a duty, a breach of that duty, and an injury proximately resulting from the breach.[4] Here, there is no dispute that West was an invitee on System Parking's property. The owner of a business premises owes an invitee the duty to exercise ordinary care and to protect the invitee by maintaining the premises in a reasonably safe condition.[5] This duty also requires a property owner to warn the invitee of latent or concealed perils on the property of which the owner has knowledge or should have knowledge.[6]

In Ohio, owners and occupiers of business premises do not have a duty to remove natural accumulations of ice and snow, but they do have a duty regarding unnatural accumulations.[7] Therefore, the first question in a slip-and-fall case involving snow or ice is whether there was a natural or unnatural accumulation. An unnatural accumulation is one that results from the act of a person—one caused by "factors other than the inclement weather conditions of low temperature, strong winds and driving snow."[8] We note that if a property owner attempts to treat ice, and that ice melts but then refreezes, this is still considered a natural accumulation.[9]

West argues that the ice he slipped on was an unnatural accumulation of ice. He contends that System Parking had piled snow on the island dividing the entrance and exit ramp and that, over the course of time, this snow had melted and run down the island and onto the ramp where it refroze, creating an unnatural accumulation of ice. But West presented no evidence supporting this hypothesis. Although Rueckert,

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[4] See *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 81 Ohio St.3d 677, 680, 1998-Ohio-602, 693 N.E.2d 271.
[5] See *Light v. Ohio Univ.* (1986), 28 Ohio St.3d 66, 68, 502 N.E.2d 611.
[6] See *Westwood v. Thrifty Boy Super Markets, Inc.* (1972), 29 Ohio St.2d 84, 86-87, 278 N.E.2d 673.
[7] See *Graham v. Golden Arch Realty Corp.*, 1st Dist. No. C-030005, 2003-Ohio-5624, ¶6, citing *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 233 N.E.2d 589.
[8] See *Porter v. Miller* (1983), 13 Ohio App.3d 93, 95, 468 N.E.2d 134.
[9] See *Graham*, supra, at ¶7.

an employee of System Parking, testified as to ways the ice patch could have formed, including melting snow piled on the island, this testimony was mere speculation and not probative evidence of fault. Ultimately, she testified that she did not know how the ice patch had formed. West himself testified that he had not seen any snow piled up on the island on the day he fell, and that he could not even remember the last time he had seen snow piled up on the island. Finally, Cromwell testified that when she went out to check the driveway, about an hour before West fell, she saw no snow piled up on the island or the ramp. In fact, she testified that the ramp had been treated with a chemical and that it "looked good."

Viewing all this evidence in a light most favorable to West, we find no support for his assertion that the ice on which he fell was created or aggravated by System Parking, or that it was anything other than a natural accumulation. There was simply cold weather that day. Therefore, because the ice patch was a natural accumulation, System Parking did not owe a duty to West. Accordingly, the single assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and **CUNNINGHAM, JJ.**

To the Clerk:

Enter upon the Journal of the Court on April 29, 2011

per order of the Court _____.

Presiding Judge